

Appln No. 10/723,817
Appeal No. 2007-0522
Amdt date May 14, 2007
Reply to Office action of March 14, 2007

REMARKS/ARGUMENTS

Pursuant to 37 C.F.R. §41.50, Applicant submits these claim amendments, accompanying arguments, and new evidence relating to the claims so rejected and requests reconsideration by the Examiner. Additionally, Applicant submits that such claim amendments obviate the claim rejections affirmed by the Board.

Claims 1-20, 24 and 25 are now in the application. Claims 1, 4, 10, 14, and 18 have been amended.

The Board entered a new ground of rejection of claims 18-20 under 35 U.S.C. 102(a) as being anticipated by Applicant's specification (APA). Additionally, the Board affirmed the Examiner's rejection of claims 18, 19 and 25 under 35 U.S.C. §102(b) as being anticipated by O'Fearna (U.S. 4,576,364).

The Applicant's amended Claim 18 calls for, in part, (underlining added for emphasis): "[a] gate pole comprising . . . an insert that is received within the lower end of the gate pole; and a pin fixedly attached to the insert . . . the pin having . . . a cylindrical portion that protrudes from the lower end of the gate pole, the cylindrical portion extending substantially to a lower end of the pin . . . wherein the pin is adapted to be inserted in a drilled socket in a pool deck.

As such, the Applicant submits that claim 18 is not anticipated by APA under 35 U.S.C §102(a). Additionally, Applicant submits that such claim amendments obviate the rejection of claim 18 by O'Fearna under 35 U.S.C. §102(b).

APA is directed to smaller diameter steel pins mounted at the lower end of a fence pole such that smaller holes, capable of receiving the smaller diameter pins, could be placed in the pool decking. However, APA states specifically "[s]uch pins have not been used at the gate structure for pool fences because of a perceived need to provide a more stable, rigid structure at and near the gate." *Col. 1:33-35*. Accordingly, APA does not describe, teach or suggest a gate pole comprising an insert received within the lower end of the gate pole. APA further does not teach a pin fixedly attached to the insert, the pin having a cylindrical portion that protrudes from the lower end of the gate pole.

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O'Fearna is directed to a portable wind screen having a rectangular sheet of fabric 10 and hollow support poles 12. The poles are of sufficient length to have a protruding end that can be pushed into the ground (soil or sand) to stand the screen upright. Telescoped within the support poles are stakes 16 cut to a sharp point at the lower end for ease of insertion into the sand.

However, O'Fearna does not describe, teach or suggest a gate pole because O'Fearna does not teach a portable wind screen having a gate. Additionally, O'Fearna does not describe, teach or suggest a pin fixedly attached to the insert. Rather, O'Fearna teaches that stakes 16 are telescoped within the support poles. Moreover, O'Fearna does not describe, teach or suggest a cylindrical portion extending substantially to a lower end of the pin. Rather, O'Fearna teaches stakes that have a sharp point for ease of insertion into soil or sand. If such stakes were inserted into a drilled socket, the sharp point of the stakes would cause the stakes to be unstable.

Accordingly, the Applicant submits that Claim 18 is not anticipated by O'Fearna under 35 U.S.C. §102(b).

Claims 19 and 25 are dependent on Claim 18. As such, these claims are believed allowable based upon Claim 18.

The Board has entered a new rejection of claims 1-17 and 24 under 35 U.S.C. §103 as being unpatentable over Sadinsky (U.S. 5,664,769) in view of APA and of claim 25 as being unpatentable over APA.

The Applicant's Claim 1 calls for, in part, (underlining added for emphasis): "[a] lightweight fence and gate for swimming pools surrounded by a deck comprising a plurality of poles, the poles including an insert that is contained within each pole and a pin that is fixedly attached to each insert, the pin protruding from the bottom of each pole . . . a gate in the fence including a frame having a pair of spaced upright support members . . . support means capable of withstanding lateral tension forces of the screen for supporting and latching the gate, the support means comprising at least a first pole on one side of the gate and a second pole on another side of the gate . . . wherein the pins are adapted to be inserted into the pool deck adjacent to the pool."

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Similarly, the Applicant's Claim 10 recites substantially similar limitations as Claim 1. Further Claim 14 recites, in part (emphasis added): "[a] method for installing a self closing gate in a tensioned removable swimming pool fence comprising a plurality of poles . . . comprising: inserting the pins protruding from the plurality of poles into a deck surrounding a swimming pool with the flexible mesh fencing in tension to maintain the fence in tension . . . the first and last poles of the series of pole defining a gate opening; the first and last poles each constituting a pair of gate poles interconnected to each other to define support structure capable of absorbing the tension of the flexible mesh fencing; fabricating a gate including a pair of side rails, a cross rail and flexible mesh tensioned between the side rails . . ."

The Applicant submits that the invention as claimed in Claims 1, 10 and 14 is neither taught, described or suggested in Sadinsky, even in view of APA.

In the recently decided case of *KSR Int'l Co. v. Teleflex, Inc.*, the Supreme Court reemphasized the established principle that an unexpected successful result of a combination of prior art elements supports a conclusion of nonobviousness. Citing *United States v. Adams*, 383 U.S. 39, 40 (1966), the Supreme Court noted that when a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the filed, the combination must do more than yield a predictable result. *Id. at 50-51*. The Court, in rejecting the Government's claim that Adams's invention was obvious, relied upon the corollary principle that when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious. *Id. at 51-52*. The fact that the elements worked together in an unexpected and fruitful manner supported the conclusion that the patented design was not obvious to those skilled in the art. *KSR, Int'l.*, 550 U.S. ____ (2007) (emphasis added).

As noted by the Board, Sadinsky teaches a gate structure as claimed in claims 1, 10 and 14. Namely, Sadinsky teaches a gate structure incorporating a pair of upright support members (or poles) which provide stability for the gate, which is typically subjected to higher tension than the rest of the fence. With reference to FIG. 3, Sadinsky provides a gate including a "pair of

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poles 20, 22 on one side and 21, 23 on the other side, each pair interconnected by respective cross members 24 and 26 on the hinged side and 25, 27 on the latched side. The net result is that each of the 20 and 22 poles with their cross members 21, 23 form a vertical truss with each pole 20 and 22 in its respective socket S in the deck PD." *Col. 3:32-38.* While Sadinsky teaches that the gate poles themselves are inserted into the pool deck, the truss structure taught by Sadinsky allows for a relatively tension-free gate for the pool fence. The Board notes that Sadinsky does not teach an insert that is contained within each pole and a pin that is fixedly attached to each insert, the pin protruding from the bottom of each pole

On the other hand, as noted above, APA teaches that smaller diameter steel pins may be mounted at the lower end of a fence pole such that smaller holes, capable of receiving the smaller diameter pins, could be placed in the pool decking. However, as acknowledged by the Board, APA states specifically "[s]uch pins have not been used at the gate structure for pool fences because of a perceived need to provide a more stable, rigid structure at and near the gate." *Col. 1:33-35.* In other words, APA teaches the pins are not usable on the gate poles because they do not provide enough structural support for a gate.

Accordingly, the Applicant submits that the references cited by the Board do not teach all of the elements of claims 1, 10 and 14. In fact, APA teaches away from the claim limitations. More specifically, since APA teaches that the pin/insert structure is too weak for a gate pole, it does not make sense to take a weak structure (i.e., the insert and the pin) and apply it to a stable gate structure (i.e., the truss), thereby defeating the purpose of the added stability provided by the truss. Such application of the weaker structure to the more stable structure is counterintuitive. Therefore, the Sadinsky and APA do not teach poles including an insert contained within the pole, a pin fixedly attached to each insert and support means comprising at least a first pole on one side of the gate and a second pole on another side of the gate . . . wherein the pins are adapted to be inserted into the pool deck adjacent to the pool. Accordingly Claims 1, 10 and 14 are patentable over Sadinsky in view of APA.

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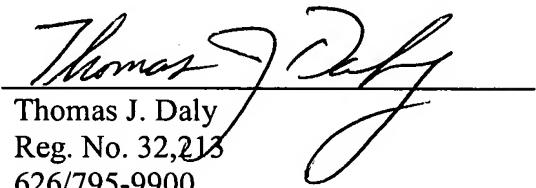
Claims 2-9, 11-13, 15-17 and 24 are dependent on Claims 1, 10 or 14 . As such, these claims are believed allowable at least based upon Claims 1, 10 or 14.

Additionally, the Board states with respect to Claims 9, 13, 17, 24 and 25 that "adhesive and screws are well recognized equivalent ways of fastening. Therefore, it would have been obvious to substitute adhesive for the screws of the admitted prior art poles when used in Sadinsky's fence." However, Applicant discovered that using adhesive to attach the pin to the plastic insert, rather than being equivalent to screws, unexpectedly provided a pole with increased structural integrity and that was less likely to break when subjected to a significant force. Specifically, as supported by Applicant's Declaration submitted herewith, when Applicant attached the pin to the plastic insert using adhesive and then applied a large force to the poles (using a truck with a beam attached to the front bumper), the poles bent, but did not break at the fulcrum point where the pole is inserted into the ground. In fact, the poles could be straightened to their original position without breaking. However, when the same force was applied to poles using a screw as an attachment means, the poles severed at the top of the insert and the sheer force caused the screw to deform and the pin to pull away from the bottom of the pole. Accordingly, because of the unexpected and fruitful results obtained when doing so, the Applicant submits that it would not have been obvious to substitute adhesive for screws on the admitted prior art poles. As such, claims 9, 13, 17, 24 and 25 are further patentable over Sadinsky in view of APA.

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Therefore, in view of the above amendment and remarks it is submitted that the claims are patentably distinct over the prior art and that all the rejections to the claims have been overcome. As such, allowance of the above Application is requested.

Respectfully submitted,
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